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IN RE INTEREST OF SHAQUILLE H., A CHILD UNDER 18 YEARS OF AGE. STATE OF NEBRASKA, APPELLEE, V. SHAQUILLE H., APPELLANT.

819 N.W.2d 741

Filed August 28, 2012. No. A-11-953.

1. **Juvenile Courts: Appeal and Error.** Prompt adjudication determinations are initially entrusted to the discretion of the juvenile court and will be upheld unless they constitute an abuse of discretion.
2. **Juvenile Courts: Criminal Law: Speedy Trial.** With respect to the calculations of the running of the speedy adjudication clock, an appellate court's criminal speedy trial jurisprudence is generally applicable in the juvenile context.
3. **Speedy Trial: Proof.** In the context of a statutory speedy trial case, the State has the burden to prove not only the reason for a delay, but also that the length of the delay is reasonable or for good cause.
4. **Speedy Trial: Appeal and Error.** The time during which an appeal of a denial of a motion for discharge is pending on appeal is excludable from the speedy trial clock.
5. **Jurisdiction: Speedy Trial: Appeal and Error.** The period of time excludable due to an appeal concludes when the district court first reacquires jurisdiction over the case by taking action on the mandate of the appellate court.
6. **Juvenile Courts: Time.** Absolute discharge from a delinquency petition is not statutorily mandated when a juvenile is not adjudicated within the required time period.
7. ____: ____. If the 6-month speedy adjudication period has not expired, there is no need to examine the factors that guide the discretionary determination to grant absolute discharge of an adjudication proceeding.
8. **Appeal and Error.** An appellate court is not obligated to engage in an analysis that is not necessary to adjudicate the case before it.

Appeal from the Separate Juvenile Court of Douglas County: DOUGLAS F. JOHNSON, Judge. Affirmed.

Thomas C. Riley, Douglas County Public Defender, and Christine D. Kellogg for appellant.

Donald W. Kleine, Douglas County Attorney, Malina Dobson, Debra Tighe-Dolan, and Tony Hernandez, Senior Certified Law Student, for appellee.

INBODY, Chief Judge, and IRWIN and SIEVERS, Judges.

SIEVERS, Judge.

I. INTRODUCTION

Shaquille H. appeals from an order of the separate juvenile court of Douglas County that denied his motion to discharge due to an alleged violation of his right to a speedy adjudication. After our review, we find that the juvenile court properly denied the motion for discharge, and thus, we affirm.

II. BACKGROUND

On September 14, 2010, the State of Nebraska filed a complaint in the county court for Douglas County alleging that Shaquille, who was born in May 1994, violated Neb. Rev. Stat. § 28-1202 (Cum. Supp. 2010) and Omaha Mun. Code, ch. 20, art. VII, § 20-204 (1993). Bond was set at $25,000, which he could meet by posting 10 percent thereof. Shaquille filed a motion to transfer the case to the separate juvenile court of Douglas County on October 13. After a hearing on November 4, the motion was denied. Shaquille filed a motion to reconsider transfer on November 8, and a hearing was set for the next day. Shaquille's motion to reconsider transfer was granted on November 9, and Shaquille was remanded to the Douglas County sheriff pending resolution of the case.

The State filed an amended petition in the separate juvenile court of Douglas County on November 10, 2010, alleging violations of Neb. Rev. Stat. § 43-247(1) (Reissue 2008). Specifically, the amended petition recites in count I, that Shaquille carried a concealed weapon on his person, in violation of § 28-1202(1), and in count II, that he possessed a "pistol, revolver or other form of short-barreled hand firearm," in violation of Neb. Rev. Stat. § 28-1204(1) (Cum. Supp. 2010). A detention hearing was held on that same date, and the court ordered Shaquille to be detained in the Douglas County Youth Center or post 10 percent of a $2,000 bond. Shaquille was arraigned on December 8, and a written denial was entered on his behalf. The juvenile court judge at the adjudication hearing stated that there was a request to "exonerate" the bond. The best we can discern from the record is that Shaquille was released from custody sometime between November 10 and

December 8 and that he has not been in custody in connection with this matter since his release.

A pretrial conference was held on January 6, 2011, and the matter was set for adjudication on February 11. Due to a funeral, the court, on its own motion, rescheduled the adjudication to April 13. Shaquille's counsel indicated to the court that Shaquille was unable to attend the April 13 hearing due to his father's having a conflicting doctor's appointment and being unable to give him a ride. His counsel requested a continuance. The matter was rescheduled for July 1, in anticipation of a plea, according to the record. However, Shaquille failed to appear on July 1. The State requested that a capias be issued and Shaquille's counsel moved for a continuance—both requests were denied. Instead, the court gave Shaquille until July 5 to appear, and the record shows that he did appear on July 1, after the hearing had concluded. Shaquille apparently changed his mind about entering a plea in this case. An order and notice of July 1 recites that Shaquille's counsel requested the matter be rescheduled and that "by agreement of counsel," the adjudication was set for October 14.

Shaquille filed a motion to discharge on October 12, 2011. The juvenile court judge called counsel for the parties into the courtroom on October 13 regarding continuing the adjudication in order to attend the judge's aunt's funeral. Shaquille's motion to discharge was discussed at that time, although no specific ruling was made. At the conclusion of this discussion, the court decided that the adjudication would remain set for the following day, but the motion for discharge had not yet been formally decided.

At the October 14, 2011, adjudication hearing, the parties began by addressing Shaquille's motion to discharge. Counsel provided argument to the court, and the State called the juvenile court's bailiff to "testify that this [case] was brought in as timely as possible" according to counsel for the State. The bailiff testified that she could not specifically recall rescheduling Shaquille's case; however, she stated, "Any case that I would have continued would have been continued to the first available date that worked around counsel's conflicts and

the Court's calendar." On cross-examination, counsel asked whether judges from neighboring counties can come in and handle any of the hearings, and the bailiff replied, "There's been exceptions when judges from other counties can come in and help, but that is with permission from the Chief Justice." After the bailiff's testimony, the judge provided his rationale for denying the motion to discharge. He reasoned, summarized, that because the purpose of the juvenile court is rehabilitative and that because the nature of the charges against Shaquille is quite serious, it would not be in Shaquille's best interests to grant the motion. No specific findings were made with regard to excludable time periods. A written and file-stamped order of October 14 denying the motion for discharge is in our record. The State then called its first adjudication witness, shortly after which the trial was continued to December 22. On November 8, Shaquille appealed from the court's denial of his motion to discharge.

III. ASSIGNMENTS OF ERROR

Shaquille assigns, renumbered and restated, that the separate juvenile court erred in denying his motion to discharge because (1) his statutory right to a speedy adjudication was violated, (2) his constitutional right to a speedy adjudication was violated, and (3) there was no evidence that discharge would not be in his best interests.

IV. STANDARD OF REVIEW

[1] Prompt adjudication determinations are initially entrusted to the discretion of the juvenile court and will be upheld unless they constitute an abuse of discretion. *In re Interest of Britny S.*, 11 Neb. App. 704, 659 N.W.2d 831 (2003).

V. ANALYSIS

1. Was Shaquille's Statutory Right to Speedy Adjudication Violated?

[2] Shaquille first argues that the trial court erred in denying his motion to discharge on the ground that his statutory right to a speedy adjudication was violated because, taking into consideration any periods of excludable time, the case was

pending for more than 6 months. The petition was filed in juvenile court on November 10, 2010. Pursuant to Neb. Rev. Stat. § 43-271(1)(b) (Reissue 2008):

> The hearing as to a juvenile in custody of the probation officer or the court shall be held as soon as possible but, in all cases, within a six-month period after the petition is filed, and as to a juvenile not in such custody as soon as practicable but, in all cases, within a six-month period after the petition is filed.

This statute also provides that the computation of the 6-month period provided for in the statute "shall be made as provided in section 29-1207, as applicable." Thus, generally, our criminal speedy trial jurisprudence with respect to the calculations of the running of the speedy trial clock is applicable in the juvenile context. Under § 43-271, the speedy adjudication clock begins on November 11, the day after the juvenile petition was filed, and the last day would be May 10, 2011. See *State v. Baker*, 264 Neb. 867, 652 N.W.2d 612 (2002) (exclude day petition was filed, count forward 6 months, and back up 1 day).

(a) Delay Not Attributable to Shaquille and Delay for Good Cause

[3] The adjudication hearing was originally scheduled for February 11, 2011. However, the court, on its own motion, rescheduled the adjudication to April 13. We have previously said that in the context of a statutory speedy trial case, the State has the burden to prove not only the reason for a delay, but also that the length of the delay is reasonable or for good cause. *In re Interest of Britny S., supra*, citing *State v. Wilcox*, 224 Neb. 138, 395 N.W.2d 772 (1986). The record shows that this period of delay was due to the funeral of an attorney who practiced law in juvenile court. The judge remarked in that regard, "I [rescheduled the adjudication hearing] on the Court's own motion February 9th . . . out of respect for [Steve] Renteria and to attend [his funeral] service, and [out of respect for] his long service in this court and others." The bailiff's testimony was that she would have rescheduled the hearing on the first available day on the court's calendar. Clearly, the

permissible inference from the testimony is that the judge's docket is busy and crowded.

In *In re Interest of Brandy M. et al.*, 250 Neb. 510, 550 N.W.2d 17 (1996), the Nebraska Supreme Court found that there was no abuse of discretion in the juvenile court's conclusion that a crowded docket alone was insufficient as good cause to extend the 6-month period prescribed in § 43-271. However, in that case, the court found that there was "no evidence [presented] that would allow the juvenile court to make findings regarding specific causes of delay as enumerated in § 29-1207(4)(a) through (f) and the extensions attributable to such causes with respect to a particular juvenile." 250 Neb. at 525, 550 N.W.2d at 27. The opinion continues, "At best, the evidence adduced by the State only allows this court to conclude that in general, there was a crowded docket in the Douglas County Separate Juvenile Court at the time of the discharge." *Id.* at 525-26, 550 N.W.2d at 27.

The instant case is clearly distinguishable from *In re Interest of Brandy M. et al., supra*. We have evidence in Shaquille's case regarding the rationale for each period of excludable delay under Neb. Rev. Stat. § 29-1207(4)(a) through (f) (Cum. Supp. 2010), as well as testimony from the juvenile court's bailiff that the continued adjudications were scheduled as promptly as possible, which we take to mean as soon as the judge had an opening on his calendar. Accordingly, we find that this period of delay was reasonable and for good cause. See § 29-1207(4)(f). Thus, we exclude this 61-day period (February 12 to April 13) in computing when the statutory adjudication clock would run. See § 29-1207(4)(f) (other periods of delay not specifically enumerated in this section are excludable if court finds they are for good cause).

(b) Delay Attributable to Shaquille

Shaquille did not appear at the April 13, 2011, adjudication hearing—the excuse offered by counsel was that Shaquille's father was unable to reschedule a doctor's appointment and that as a result, he could not get Shaquille to the hearing. His counsel made an oral motion for a continuance, there was no objection from the State, and such motion was granted. The

adjudication was rescheduled to July 1. Section 29-1207(4)(b) provides that "the period of delay resulting from a continuance granted at the request or with the consent of the defendant or his or her counsel" is excludable. Hence, the period from April 14 to July 1, 79 days, is excludable.

Shaquille did not appear at the July 1, 2011, hearing. Shaquille's counsel moved for a continuance at the hearing, and the court denied the motion. The State requested that a capias be issued, and the court denied such request, giving Shaquille until July 5 to appear in court. According to an order in evidence dated July 1, 2011, and filed on July 6, Shaquille appeared with his father on July 1, following the hearing, and his counsel requested that the hearing be reset. That order recites that "by agreement of counsel" the matter was "reset" for an adjudication hearing on October 14. We find that this period of delay, July 2 to October 14, was excludable under § 29-1207(4)(b), as this continuance was granted with Shaquille's consent. Thus, we find that the period of time from July 2 to October 14, 105 days, is also excludable.

Therefore, a total of 184 days are excludable due to these two periods of delay attributable to Shaquille. Taking into consideration this 184-day excludable time period, plus the 61 days of excludable time we previously determined were for good cause attributable to the court, the State had until January 10, 2012, to bring Shaquille to trial (May 10, 2011 + 245 days). When Shaquille moved for discharge of the complaint on October 12, 2011, there were still 90 days remaining on the 6-month statutory speedy adjudication clock. Shaquille's first assignment of error is thus without merit.

(c) Time Excluded Due to Motion to Discharge

The time between the filing of Shaquille's motion for discharge on October 12, 2011, and the juvenile court's denial of such motion on October 14 does not enter into the calculation because the time through October 14 has already been deemed excludable within Shaquille's excludable time discussed above. Clearly, we cannot count an excludable day twice.

[4] Our record reveals that trial was started on the morning of October 14, 2011, after the motion to discharge was

denied. However, trial was continued at 11:29 a.m. by the court because of the judge's aunt's funeral that the judge wanted to attend. The court announced that the trial would be continued to December 22. The present appeal was filed on November 8. The applicable law is that the time during which an appeal of a denial of a motion for discharge is pending on appeal is excludable from the speedy trial clock under § 29-1207(4)(a) as "other proceedings concerning the defendant." See *State v. Baker*, 264 Neb. 867, 652 N.W.2d 612 (2002). And the time between October 14 until November 8, the day the appeal was filed, is excluded under the good cause catchall clause of § 29-1207(4)(f), given the evidence in the record from the bailiff about how matters are rescheduled when continued, together with the judge's explanation about his aunt's funeral. Thus, there is a showing of good cause for this timeframe. The speedy adjudication clock was tolled on October 15 and continues to be tolled during the pendency of this appeal.

(d) Summary of Statutory Speedy Adjudication Calculation

[5] As said at the outset, without any excludable time, the 6-month speedy adjudication clock would have run out on May 10, 2011. We have found 61 days excludable for the lawyer's funeral; 79 days excludable for the consented continuance after Shaquille's failure to appear on April 13; 105 days excludable for his second failure to appear on July 1, and the resulting continuance; and 25 days from October 15 (the day after the continuance due to the judge's aunt's funeral) until the appeal to this court was filed on November 8, which tolls the running of the clock until the appeal is finally concluded and the trial court takes action on our mandate. This is a total of 270 days, meaning that when the notice of appeal was filed, the State had until February 4, 2012, in which to do the adjudication. Consequently, the State will have an additional 86 days left on the speedy adjudication clock when the juvenile court regains jurisdiction after action is taken on our mandate. See *State v. Ward*, 257 Neb. 377, 597 N.W.2d 614 (1999), *disapproved on other grounds, State v. Feldhacker*, 267 Neb. 145, 672 N.W.2d 627 (2004) (period of

time excludable due to appeal concludes when district court first reacquires jurisdiction over case by taking action on mandate of appellate court).

2. Was Shaquille's Constitutional Right to Speedy Adjudication Violated?

Shaquille next assigns that his constitutional right to speedy adjudication was violated because, by the time he filed his motion to discharge, more than 6 months had elapsed since the criminal complaint was filed in county court. Shaquille cites *In re Interest of Brandy M. et al.*, 250 Neb. 510, 550 N.W.2d 17 (1996), apparently in support of that proposition. However, in *In re Interest of Brandy M. et al.*, the Nebraska Supreme Court specifically declined to decide whether the U.S. and Nebraska Constitutions provide a "speedy trial" right in the context of delinquency adjudication proceedings. However, unlike this case, in *In re Interest of Brandy M. et al.*, the court found a violation of the speedy adjudication statute, plus there is no indication from *In re Interest of Brandy M. et al.* that a criminal complaint was first filed against any one of the 10 juveniles that were the subject of that opinion, followed by a transfer to the juvenile court as occurred in Shaquille's case. Thus, *In re Interest of Brandy M. et al.* is procedurally quite different from this case. Nonetheless, we believe that the following quote from *In re Interest of Brandy M. et al.* is instructive:

> [W]e find no reason to decide this constitutional issue [of whether a speedy trial right exists in the context of a delinquency adjudication], as §§ 43-271 and 43-278, when properly construed, confer a statutory right to a prompt adjudication hearing to all juveniles within § 43-247(1), (2), (3)(b), and (4). This construction is based first of all upon the three conditions of custody identified in the clear and unambiguous language of § 43-271: (1) juveniles in the temporary custody of an officer of the peace without a warrant, (2) juveniles in the custody of the probation officer or court, and (3) juveniles not in custody.
>
> . . . .

> It is readily apparent from the plain language of § 43-271 that the Legislature intended to provide a statutory right to a prompt adjudication hearing for all juveniles. However, those juveniles being held in custody are to receive an adjudication hearing as soon as *possible*, whereas the juveniles not being held in custody are to receive an adjudication hearing as soon as *practicable*. Both sets of juveniles should receive an adjudication hearing within a 6-month period after the petition is filed pursuant to § 43-271, but a statutory scheduling preference is granted to those juveniles that are in custody pending adjudication.

250 Neb. at 518-19, 550 N.W.2d at 23-24 (emphasis in original).

Here, even if we start the speedy adjudication clock with the filing of the charges in Douglas County Court on September 14, 2010, there is still time left on the 6-month speedy adjudication clock provided for by § 43-271. The last date to adjudicate Shaquille would have been March 14, 2011, absent excludable time periods. There are two excludable periods of delay attributable to Shaquille between the filing of the criminal complaint in county court and the subsequent filing of the juvenile petition, after Shaquille successfully had the case transferred to juvenile court, that must be included in the calculus, which excludable periods we did not discuss with reference to his statutory right to a speedy adjudication. The first excludable period is due to Shaquille's motion to transfer to juvenile court, which was filed on October 13, 2010, and denied on November 4, for a total of 22 excludable days, and the second excludable period is due to Shaquille's motion to reconsider transfer, which was filed on November 8 and granted on November 9, equaling 1 excludable day. See § 29-1207(4)(a). Thus, there is a total of 23 excludable days that occurred before the transfer motion was granted. These 23 days would be added to the 270 days of excludable time as discussed above that accumulated while the matter was pending in the juvenile court.

Accordingly, the last day to adjudicate Shaquille under his theory that we should start the count on September 14, 2010, when the criminal charges were filed in county court, was

March 14, 2011, plus 293 days of excludable time, which would be January 1, 2012. Thus, even under Shaquille's theory, when the motion to discharge was filed on October 12, 2011, the State had 51 days left on the speedy adjudication clock, starting the count on October 13. Even if there were a constitutional right to a speedy adjudication, an issue we do not decide, and if we were to start the clock with the filing of charges in county court, the 6-month guideline of § 43-271 is not violated. It follows, from that result, that no constitutional right is implicated—even if such exists, an issue we do not decide. Put another way, because of the foregoing calculation showing time left on the speedy adjudication clock, we conclude, as the Supreme Court did in *In re Interest of Brandy M. et al.*, 250 Neb. 510, 550 N.W.2d 17 (1996), that there is no need in this case to determine whether a juvenile facing a delinquency adjudication has a constitutionally grounded right to a speedy adjudication.

3. Was Discharge in Shaquille's Best Interests?

[6-8] Shaquille's final allegation is that the juvenile court abused its discretion in overruling his motion to discharge, because it failed to determine that discharge would not be in his best interests. Shaquille's argument is premised on the adjudication's not having been held within the statutory 6-month window under § 43-271. However, absolute discharge from a delinquency petition is not statutorily mandated when a juvenile is not adjudicated within the required time period. See *In re Interest of Brandy M. et al., supra*. But here, we have determined that, as opposed to *In re Interest of Brandy M. et al.*, the statutory 6 months has not run, and thus, there is no need to examine the factors set forth in *In re Interest of Brandy M. et al.* that guide the discretionary determination to grant absolute discharge when the speedy adjudication clock has run out. Because the 6-month speedy adjudication clock had not run when the motion to discharge was filed, the trial court did not need to determine whether discharge would be in Shaquille's best interests, and neither do we. See *In re Trust Created by Hansen*, 281 Neb. 693, 798 N.W.2d 398 (2011) (appellate court

is not obligated to engage in analysis that is not necessary to adjudicate case before it).

VI. CONCLUSION

For the foregoing reasons, we find that the juvenile court did not abuse its discretion when it denied Shaquille's motion for discharge.

AFFIRMED.

IN RE INTEREST OF LORI S., A CHILD UNDER 18 YEARS OF AGE. STATE OF NEBRASKA, APPELLANT, V. LORI S., APPELLEE.

819 N.W.2d 736

Filed August 28, 2012. No. A-12-163.

1. **Jurisdiction: Appeal and Error.** An appellate court determines jurisdictional issues not involving factual disputes as a matter of law, which requires the appellate court to reach independent conclusions.
2. ____: ____. Before reaching the legal issues presented for review, it is the power and duty of an appellate court to determine whether it has jurisdiction over the matter before it, irrespective of whether the issue is raised by the parties.
3. **Criminal Law: Judgments: Jurisdiction: Appeal and Error.** Absent specific statutory authorization, the State, as a general rule, has no right to appeal an adverse ruling in a criminal case.
4. **Courts: Juvenile Courts: Appeal and Error.** Most cases arising under Neb. Rev. Stat. § 43-2,106.01(1) (Cum. Supp. 2010) are governed by Neb. Rev. Stat. § 25-1912 (Reissue 2008), which sets forth the requirements for appealing district court decisions. But, the plain language of § 43-2,106.01(2)(d) carves out an exception for delinquency cases in which jeopardy has attached, such as where the State's petition is dismissed for lack of evidence.
5. ____: ____: ____. In delinquency cases where jeopardy has attached, an appeal may be taken only under the procedures of Neb. Rev. Stat. §§ 29-2317 to 29-2319 (Reissue 2008).
6. **Courts: Appeal and Error.** The language of Neb. Rev. Stat. § 29-2317 (Reissue 2008) requires the appeal of a county court judgment to the district court sitting as an appellate court.
7. ____: ____. Reference to the county court in Neb. Rev. Stat. §§ 29-2317 to 29-2319 (Reissue 2008) also applies to the separate juvenile court.
8. **Statutes: Appeal and Error.** Appeals under specific statutory provisions require strict adherence to the statute's procedures.